# ORGANIZATION OF THE BAR

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Lawyers have made a spirited fight against the recall of judges. They will soon have to face a popular demand for a limitation upon the right of advocacy which will mean for most of them neither more nor less than the recall of lawyers.

Over-contentiousness is the all-inclusive definition of present difficulties in the administration of justice. Contentiousness has exceeded all reasonable bounds because of encroachments upon the authority of an elective judiciary and because of the lawyer's tremendous personal interest in litigation. Most litigation is conducted by lawyers attached to a few clients upon whose favor they are in large part dependent for their living. Often the lawyer's interest exceeds that of his client. Ordinarily his allegiance to his client is greater than his loyalty to the court. It is an instance of practice in conflict with theory.

The line of argument is short and straight. To many minds it leads directly to the conclusion that the way to judicial efficiency lies in attaching the advocate more closely to the court and severing his intimate relationship with his client.

To accomplish this it is proposed that advocacy be restricted to an "official trial bar," the members of which would be paid solely from public funds.

At present the lawyer's connection with the court is one of extreme tenuity. His relation to his client becomes constantly more intimate. All large interests keep lawyers just as they keep accountants, auditors, purchasing agents, and so forth. The proposed change simply goes to the limit on the other side. It makes the lawyer's relation to his client perfunctory, his relation to the court of the most intimate sort.

It is a curious fact that the proposal that an official trial bar be created as a sort of poultice for weak-backed courts comes from the bar itself. The idea will have vastly more support from individual lawyers, it is already evident, than has the judicial recall.

That it will take well with the radical press is a foregone conclusion. In fact one of its first appearances in two-column editorials evoked the expression "Free Justice" which well may become the slogan for this radical wing.

It may be assumed that the greater part of the bar will scent danger and rebel against this threatened swing of the pendulum to the opposite end of the arc. We already hear them citing Pliny and Tacitus and declaring that the idea of a trial bar is no new thing.

What sane middle ground is there for the conservative lawyer? He will admit that today the lawyer has too great a stake in decisions but insist that the almost complete removal of personal interest would make courts weaker at a time when they should be stronger.

Efficiency in the administration of justice implies control by the courts and self-discipline on the part of the bar. The former alone could not suffice for the lawyer has many functions over which the court can have no direct supervision. There must be built up for both counselor and advocate a powerful inhibition against the violation of ethics. Much stronger courts could compel outward compliance with necessary rules. But real reformation of the bar must be of the very spirit of the institution. It must begin within and work out. It must be the result of a new and larger self-interest, a self-interest which embraces the entire profession.

The bar has its share today of conscientious members. How is the conscience of the sensitive to become the conscience of the entire bar? Only one way is possible. It must come by welding all the lawyers of a state into one closely knit organization. Given a genuine organization the sentiment of the majority will speedily control the conduct of all.

There are three reasons for having any organization of lawyers. First, for political purposes, employing the word in its larger meaning; it embraces discussion of proposed legislation, the development of procedural law, and possibly the exercise of influence with respect to the selection of judges. Second, for social intercourse. For both of these needs organization must be on a voluntary basis.

Third, for the government and self-discipline of the bar, including admission to practice, standards of education, suspensions, and involuntary retirement. Such purely fiscal work as the reporting of decisions, or any other work which affects equally every member, may be properly included in this classification. But for this third field voluntary organization is wholly ineffective.

The bars of the several states and of the Union have existed long enough to prove what can be done through voluntary organization. They take care well enough of the social and political needs. They fail sadly in the third field, that of self-government. Voluntary organization must always be partial organization. At the present time it does not extend to more than one-fourth of the entire active profession.

If there is to be self-government of the bar there must be organization of an authoritative sort on a democratic basis. There must be no member left out of the sanctuary. Membership must be inseparable from the privilege of practicing law. For every lawyer one vote in the government of the bar must be the simple, broad, principle of association.

All that is necessary is to incorporate the bar of a state, provide simple machinery for executing the majority will, and give to the organization certain reasonable responsibilities, such as determining educational requirements, conducting entrance examinations, fixing standards of ethics, and enforcing them by suspension or removal.

A minimum of effort is required of the membership for it can be provided that officers and a board of governors shall be elected by mail and that they shall report all their doings fully. The expense can be kept very low.

There are too many lawyers by far. In most states we have left competition to regulate numbers as if nobody were concerned but the lawyer. Unrestricted competition has its share of blame to meet for it has made tenderness of conscience a burden and bluntness of conscience an asset. It has put a premium on sheer will power and has handicapped intellect.

While old practitioners, many of them competent to grace appellate courts, have to do the work of beginners to make a living, the latter are subjected to a starvation test. There is a form of riddance but it is blind. It weeds out the good with the bad. It puts a premium on sharp practices. Too often those who refuse to stultify themselves are forced out and just as often those who make terms with their self-respect are rewarded by success.

Open competition implied by easy admission makes it a topsy-turvy profession. There is a survival of the fittest but the specifications of fitness are wrong. There is absolutely no danger from the standpoint of the public that there will ever be a shortage of

lawyers. If there were but one-third as many as now, that one-third, assisted by non-licensed apprentices, would readily supply all needs.

There is but one way to restrict the number of lawyers and that is to make the examinations for admission more difficult. Applicants cannot be given a moral grading, though of course some attention must be paid to morals to bar the few who are evidently unfit. It is in after years, under the pressure of competition, that the conscience becomes dulled. If it be true that wickedness is after all only stupidity, the lawyer obtained by intellectual selection can better be relied upon to maintain the honor of the profession than if the attempt were made to plot the moral curve of each applicant in advance.

Selection of new material will always be the large duty of the profession, but just at present the elimination of the unfit, or their sufficient disciplining, looms big. One of the things all self-respecting lawyers have desired is means for ridding the profession of those who bring discredit upon it. If the power existed it would need to be exercised but seldom. The problem has proved altogether insuperable for our voluntary bar associations with their limited membership and frequent change of officers. The vantage lies with the rascal. The worthy lawyer shrinks from the uneven conflict. His self-interest bids him pass on the other side. Were he linked up by law with the shyster and made responsible as the fellow members of an organization must be responsible for one another, his self-interest would lie in enforcing compliance to reasonable standards.

Just as sure as the majority of the profession is afforded a means for expressing its will with respect to its membership, just so certainly will this majority raise the standard of all to its own standard.

At present the lawyer has little to gain and much to lose by vigilance work. Rational organization will invert the terms of the equation.

The present organizations of the bar comprise the American Bar Association and forty-seven state bodies, besides those formed in the District of Columbia, in the island possessions, and those existing as city or county organizations. In all of them membership is voluntary and loose. There is but little working affiliation between these bodies though the similarity of structure is striking, and

the American Bar Association does act *in loco parentis* to the state bodies.

If it be assumed that the present associations remain unaltered to fill the rôles for which they are well calculated, and organization proceed independently on the thorough, democratic, and corporate basis, there will be little or no need of the coördination of all the state bar incorporated bodies. The need for coördination between the states, through the mediation of a central national body, is on the social, political, and voluntary sides. There is at present a strong indication that such coördination will soon exist. It is afforded by the need for recasting the American Bar Association, due to its rapid growth, which makes the present unwieldy form conspicuously inefficient. This need is reflected in a resolution adopted at the Montreal meeting of 1913 which created a committee charged with the duty of recommending changes in the constitution.

Thorough coördination with the state bar associations implies the control of the business of the American Bar Association by a congress of delegates representing the state bodies on a proportional basis.

The need for solidarity was emphasized by the recent fight against the judicial recall. The coming struggle against the recall of the lawyer from his quasi-judicial position as advocate will further call for solidarity. At present the bar has only an opportunity for agitating. Even this right is lost if the bar be seriously divided on a proposition. It is absolutely necessary that it have a means for settling questions of discipline in the only way that questions can be settled, by voting and by holding the minority to the result of the polling.

This genuine organization is likely to come about as a local movement, in one state after another. To have the idea accepted by the American Bar Association and encouraged by this parent body, would go a long way to facilitate its adoption. The American Bar Association has concerned itself with uniform legislation for the states; has framed a code of ethics; established a comparative law bureau; fathered an association of law schools, and done other things calculated to benefit the public, including the campaign against the judicial recall, but itself it has thus far not sought to benefit directly

The need for solidarity and self-government in the bar is one of the reasons for the organization in 1913 of the American Judicature

Society, the only lawyers' organization devoted frankly and exclusively to the promotion of efficiency in the administration of justice. The society proposes to draft a model act for the organization of the bar. Other model acts, looking to the reorganization of metropolitan and state courts on an efficiency basis, will be drafted, submitted to a selected council of representative lawyers in all the states, and then be presented in final form to the people and their legislatures.

Popular interest in judicial reform has outstripped popular experience and knowledge. The question is foremost among national problems. Public opinion has been aroused to such a degree that action of some sort is imminent in many states. But the bar through its voluntary associations has reacted in feeble and uncertain terms to the popular demand, or has set itself in opposition to flagrantly unwise propositions. There is obvious insufficiency of counsel based upon comparative study. The organizers of the American Judicature Society, embracing some of the most eminent minds in the profession, hope that the organization may prove to be the logical response of the bar to the present insistent need for guidance.